WAKE COUNTY

NORTH CAROLINA

IN THE GENERAL COURTS OF JUSTICE SUPERIOR COURT DIVISION 08 CVS 1 2 4 0 2

THE NORTH CAROLINA STATE BAR, PETITIONER,)		
v.)	CONSENT ORDER OF PRELIMINARY INJUNCTION	
DAVID A VESEL, ATTORNEY, RESPONDENT.)		: 19 00

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County on motion of petitioner, the North Carolina State Bar. Petitioner was represented by Katherine E. Jean. Respondent David A. Vesel was represented by F. Hill Allen. Based upon the consent of the parties, the Court makes the following:

FINDINGS OF FACT

- 1. Respondent, David A. Vesel ("Vesel"), was licensed to practice law in North Carolina on November 25, 1994.
- 2. As of the date of this petition, Vesel's address of record on file with the North Carolina State Bar is 109 Elm Street, Creedmoor, North Carolina 27522.
- 3. The State Bar has received evidence indicating that funds delivered in trust to Vesel for the benefit of clients were misappropriated by an employee in Vesel's law office and that Vesel did not follow the requirements of the Revised Rules of Professional Conduct to safeguard those entrusted funds.
- 4. Vesel has provided the State Bar with documents relating to the misappropriation by the employee, authorizations for the release of bank records, access to relevant files, and computer equipment for analysis.
- 5. While the State Bar reviews the matter and affected accounts, a need for prompt action exists to ensure that further entrusted funds are properly safeguarded.

Based upon the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

- 1. Prompt action, pursuant to N.C. Gen. Stat. 84-28(f), is necessary to preserve the status quo while the State Bar conducts an analysis of Vesel's trust and operating accounts and to ensure that client funds are properly safeguarded.
- 2. Until permitted to do so by further order of this Court, Vesel should be enjoined from accepting any further funds from or on behalf of clients or other individuals in any fiduciary capacity, from writing checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this order.
- 3. To assist the State Bar's analysis of his trust and operating accounts, Vesel should provide the State Bar, to the extent not already provided, with records of all accounts in which client or fiduciary funds have been deposited.
- 4. Vesel should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until and unless permitted to do so by further order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

- 1. David A. Vesel is enjoined from accepting or receiving any funds from clients or third parties in any fiduciary capacity, from withdrawing any funds from and/or drawing any checks or other instruments against any account in which client or fiduciary funds have been deposited and from directing any employee or agent to withdraw funds from and/or to draw any checks or other instruments against any account in which client or fiduciary funds have been deposited until and unless permitted by subsequent orders of this Court.
- 2. Vesel or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall immediately produce to the North Carolina State Bar for inspection and copying all of Vesel's financial records relating to any account into which client or fiduciary funds have been deposited, including, but not limited to bank statements, canceled checks, deposit slips, client ledger cards, check stubs and debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds.
- 3. Vesel or any other person having custody or control over records relating to individuals for whom he has provided legal services shall produce to the North Carolina State Bar for inspection and copying all records and documents including but not limited to client files, billing statements, memoranda and receipts. Current client files shall be made available or produced within 24 hours of demand by the State Bar and closed client files shall be made available or produced within 3 days of demand by the State Bar.

- 4. If Vesel does not have possession of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rules 1.15-2 and 1.15-3 of the Revised Rules of Professional Conduct, he shall direct the bank(s) where his bank account(s) are maintained, within 10 days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar at Vesel's expense.
- 5. Vesel shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until and unless he is permitted to do so by further order of this Court.
- 6. Prior to entry of this Order, Vesel had reached settlement agreements in the cases of two of his clients, (1) Mr. and Mrs. Jonathan Herron and (2) Shayne and Kim Tressler. One of the settlement agreements contains confidentiality clauses. As an exception to the injunction contained in this Order, the Court specifically authorizes Vesel to receive, in trust, funds for the benefit of those clients and disburse those funds in the amounts and to the payees enumerated on Exhibit A attached hereto under seal. This Order does not prohibit Wachovia Bank, N.A. from honoring checks payable in relation to those settlement proceeds.
- 7. Before the entry of this Order, Vesel had already written and mailed to the payees listed on attached Exhibit B checks drawn on Wachovia Bank trust account number 2000029514520. These checks represent amounts the listed payees are entitled to receive from Vesel in connection with legal services provided by Vesel prior to the entry of this Order. This Order does not prohibit Wachovia Bank from honoring the checks enumerated in Exhibit B.

8. This Consent Order of Preliminary	Injunction shall remain in effect	until
further orders of this Court.	·	\bigcirc

THIS the 16th day of July

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Wake County Superior Court And

WE CONSENT

Katherine E. Jean Attorney for Petitioner

David A. Vesel

Respondent

F. Hill Allen

Attorney for Respondent

FILED UNDER SEAL

Exhibit A to Consent Order

Name of Payee on Check	Amount of Check
Shayne H. Tressler	\$3,833.00
David A. Vesel, P.A.	\$1,167.00
Jonathan Herron & Ashley Herron	\$39,776.94
David A. Vesel, P.A.	\$20,223.06

Exhibit B to Consent Order

Check No.	Name of Payee on Check	Amount of Check
014802	Colonial Title	\$182.00
008704	Colonial Title	\$66.25
008680	Colonial Title	\$80.63